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JONES, Judge:

In this protracted litigation, which the Ninth Circuit recently returned - once again - to this court, defendant United States moves (# 504) the court to reconsider a decision Magistrate Judge Stewart rendered in February 2006, and this court adopted in April 2006. See Kwai Fun Wong, et al. v. Beebe, et al., Civil No. 01-718-ST (Findings and Recommendation, Feb. 14, 2006)(# 325), adopted by Order (April 10, 2006)(Jones, J.)(#358). Specifically, defendant asks this court to reconsider the decision to apply equitable tolling to excuse plaintiff's late filing of her Federal Tort Claims Act ("FTCA") claim for negligence, which is plaintiff's only surviving claim.<sup>1</sup>

Without question, Judge Stewart applied, and this court adopted the application of, principles of equitable tolling in permitting plaintiff's late filing. Findings and Recommendation, pp. 6-9. And also without question, under Ninth Circuit precedent then and now, the court

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<sup>1</sup> The history of this litigation is well-documented in numerous decisions by this court and the Ninth Circuit, and need not be repeated here.

should have dismissed the untimely FTCA claim for lack of jurisdiction. As the Ninth Circuit recently clarified:

[T]he six-month statute of limitations in § 2401(b) [of the FTCA] is jurisdictional and . . . the failure to file a claim within that time period deprives the federal courts of jurisdiction. Accordingly, the doctrines of equitable estoppel and equitable tolling do not apply.


Marley v. United States, 567 F.3d 1030, 1038 (9th Cir. 2009). In so stating, the Ninth Circuit explained in detail that it had "long held that § 2401(b) is jurisdictional," citing Ninth Circuit precedent supporting that view and explaining away a contrary 1996 panel decision. See Marley, 567 F.3d at 1035-36, 1037-38. Consequently, plaintiff's contention that Marley should not be applied retroactively is misplaced.

Accordingly, defendant's motion (# 504) for reconsideration must be granted. On reconsideration, I conclude that this court has lacked jurisdiction over plaintiff's untimely filed FTCA claim since she first filed the claim in August 13, 2002.

#### CONCLUSION

Defendant's Motion for Reconsideration (# 504) is GRANTED. Plaintiff having no surviving claims, this action is dismissed with prejudice. Any other pending motions are denied as moot.

DATED this 28<sup>th</sup> day of October, 2010.

  
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ROBERT E. JONES  
U.S. District Judge